

HUMAN SERVICES BOARD

# INTRODUCTION

## FINDINGS OF FACT

1. The petitioners are the great-grandparents of children who are in DCF custody. From their written filings pursuant to this matter it is clear that the petitioners have had ongoing disagreements with the family court and DCF, including alleged restrictions that have been placed on them regarding visitation.

2. In July 2007 the petitioners filed an application to receive a foster care license in order to become the caretakers for their great-grandchildren.

3. During the application process the petitioners accused DCF workers of traumatizing the children, and they disputed whether the children should be in DCF custody. The Department's investigation of the petitioners also turned up police reports that the petitioners had impeded earlier attempts by the police to locate the children after they had been taken and hidden by their mother (the petitioners' granddaughter) while they were in DCF custody.

4. The Department denied the petitioners' application in a letter dated December 26, 2007. Following the petitioners' appeal of this decision, the Department conducted a Commissioner's Review that included a meeting with the petitioners on February 8, 2008. In a letter dated February 22, 2008, the Department upheld its denial of the petitioners' application.

5. At a telephone status conference held on May 13, 2008 the hearing officer directed the petitioners to identify their factual and legal disagreements with the reasons given by the Department in its February 22 denial. To date, the petitioners have not responded.

6. The gist of the Department's denial is its determination that the petitioners have had a history of confrontation and conflict with the Department concerning their granddaughter and their great-grandchildren. The petitioners do not dispute that they have accused several Department employees, police officers and the Family Court of unfair treatment of themselves and their granddaughter. Based on this the Department concluded, *inter alia*, that the petitioners do not meet the Foster Care Regulations requiring cooperation and sound judgment.

ORDER

The decision of the Department regarding its denial of the petitioners' application for a foster care license is affirmed. All questions involving decisions made by the family court and SRS in relation to custody, foster care placement and visitation are dismissed as being under the exclusive jurisdiction of the family court.

REASONS

It appears that the petitioners have been frustrated in becoming parties to family court proceedings regarding their great-grandchildren in light of disagreements they have with the court and DCF regarding custody and visitation.

Nonetheless, the Board can make no legal ruling interfering with what has happened in the family court in a CHINS petition. The legislature and the Supreme Court have made it clear that the family court has exclusive jurisdiction over a "proceeding" in a juvenile matter. 33 V.S.A. § 633, In re Susan Kirkpatrick 147 Vt. 637, 523 A.2d 1251 (1987). While the Board has been held to have jurisdiction when the matter involves assistance, benefits or social services which are collateral to court proceedings (e.g. who will pay for counseling sessions), *Id.* at 638, the matters raised by the petitioners are far from collateral. Their concerns--the custody, placement and visitation regarding their great-grandchildren--are central issues for a court in a CHINS petition. 33 V.S.A. § 654. Such core issues in the court proceeding are never reviewable by the Board. Thus, the Department's request to dismiss those issues must be granted.

The Board does have jurisdiction to hear whether the Department has erred in failing to grant a foster care license to the petitioners. 3 V.S.A. § 3091(a). However, the Board has consistently held that the Department, standing *in loco parentis* of the children in its custody, is entitled to a high degree of deference and discretion in matters of foster care. Unlike "commercial" licenses administered by

the state (e.g. day care facilities, community care homes, etc.), there is no inherent due process "property right" in a foster care license. See, e.g., Fair Hearing No. 11,204.

The Department has adopted regulations governing foster care licenses pursuant to its authority at 33 V.S.A. § 306. The goal of the regulations is to "assure the care and safety of children who must live in homes other than their own". Reg. 010, Licensing Regulations for Family Foster Care, Sept. 1, 1992. A person who is unwilling or unable to meet the regulations will have her application denied. *Id.* at 010.

In this case the Department has refused to grant the petitioners a foster care license because it has determined, *inter alia*, that they are unwilling or unable to meet regulations regarding "commitment to foster care, and the ability and willingness to work cooperatively in support of the child's case plan" (§§ 010[3] and 322) and "sound judgment" (§201.5). Based on the petitioners' written statements submitted in connection with their application, review, and this appeal, it cannot be concluded that the Department has abused its discretion in determining that the petitioners' history and attitude make it very unlikely that they can cooperate with the family court and the Department in carrying out children's needs as set forth in any case

plan. Thus, the Department's decision denying them a foster care license must be affirmed. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 17.

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